



**California Office**

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**DOCKET**

**09-RENEW EO-1**

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January 27, 2010

***Via Electronic Mail to: [doCKET@energy.state.ca.us](mailto:doCKET@energy.state.ca.us) (hardcopy to follow by U.S. Mail)***

California Energy Commission

Dockets Office, MS - 4

Re: Docket No. 09 - Renew EO - 01

1516 Ninth Street

Sacramento, CA 95814 - 5512

Re: Revised Draft Best Management Practices and Guidance Manual: Desert Renewable Energy Projects  
(09-Renew EO-01 "Renewable Energy Executive Order")

Dear Sir/Madam:

On behalf of Defenders of Wildlife ("Defenders") and our more than one million members and supporters in the U.S., 200,000 of which are in California, I am writing to provide comments to the Renewable Energy Action Team ("REAT") for consideration in finalizing the Best Management Practices and Guidance Manual: Desert Renewable Energy Projects. Comments contained in this letter pertain to the revised draft staff report published in December 2009 for public review and comment.

Defenders appreciate the continued work of the REAT on this guidance manual and the opportunity to provide comments and recommendations. We also submitted comments on the initial draft manual, dated November 20, 2009. Our comments follow, arranged by page number, line and subject.

**1. Suitable Development Areas: Page 3, lines 1-3; Page 15, lines 21-23:** We are pleased to see that the pre-application guidance is supposed to contain the identification of areas suitable for development by the REAT for the proposed siting of renewable energy facilities. We commented on the urgency of identifying such areas in our letter dated November 20, 2009, and we emphasize the need to complete the identification of suitable areas within the very near future. We would point out that this identification of these areas is obviously not going to happen by January 2010, as noted in the draft guidance document. As to the issues involved in the identification of these areas, we reiterate our comments from our previous letter that the identification of these areas must be conducted in an open and scientifically based process, is done consistent with the development of the nascent Desert Renewable Energy Conservation Plan and the Bureau of Land Management's (BLM) Solar Programmatic Environmental Impact Statement, and utilizes the recommendations of the conservation community as to what areas would be suitable or unsuitable in the desert for renewable energy development.

**National Headquarters**

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The BLM California Desert District has received approximately 130 right of way applications for the development of solar and wind energy generation facilities on approximately one-million acres of public land in the California Desert. A very large number of these applications are for public lands having significant natural resources, including important natural communities supporting diverse wildlife species and populations. These species include the threatened Desert Tortoise (State and Federal Threatened), Mohave Ground Squirrel (State Threatened), numerous BLM Sensitive Species, and several species of special concern identified by the State.

Priority renewable energy project permit processing is underway. The environmental issues associated with the priority solar and wind energy projects (approximately 12) have proven significant. This is undesirable for all parties involved in the permitting process for a variety of reasons: 1) Potential loss of significant amounts of habitat occupied by legally protected species of plants and animals, 2) High cost environmental surveys and reports paid by the applicant, 3) Uncertainty of obtaining permits for projects in areas with high biological resources values, and 4) High cost of mitigation, monitoring and species translocation costs if projects are ultimately approved.

In addition to identifying areas appropriate for development, we urge the REAT to establish a firm policy that restricts consideration of projects outside of the list of “fast-track” projects (i.e., those projects that have been determined to not be eligible for American Reinvestment and Recovery Act stimulus funding due to timing or other issues) to those areas identified by REAT as acceptable for development.

**2. Water: Page 3, line 4; Page 15, line 24:** We are very disappointed and concerned that the revised draft does not adequately protect all naturally occurring surface and groundwater. As written, the revised draft would merely not allow use of naturally occurring fresh water. It states, “Fresh inland waters” are defined in the State Water Resources Control Board *Water Quality Control Policy on the Use and Disposal of Inland Waters for Powerplant Cooling* as those inland waters which are suitable for use as a source of domestic, municipal, or agricultural water supply and which provide habitat for fish and wildlife.” This policy is shortsighted and overly restrictive with regard to conservation and protection of naturally occurring waters in the California Desert, most of which are brackish in nature.

Among the most important and sensitive habitats in the desert are those associated with wetlands, including those derived from fresh and brackish waters. The BLM, through the California Desert Conservation area Plan of 1980, recognized the ecological importance of salt and brackish water marshes and classified all of them as Highly Sensitive Unusual Plant Assemblages.<sup>1</sup> Furthermore, they also included all vegetation associated with seeps and springs, riparian zones and river bottomlands, and palm oases in the Highly Sensitive category, without regard to the freshness or salinity of the water. **This plan and the provisions for the protective**

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<sup>1</sup> Bureau of Land Management. 1980. The California Desert Conservation Area Plan. Vegetation Element; Unusual Plant Assemblages, page 41. California Desert District, Riverside, CA.

management of Unusual Plant Assemblages on public lands managed by the BLM are in effect, and therefore need to be incorporated into the manual.

We strongly urge the REAT to include strong conservation and protection for all ground and surface waters without regard to their conductivity or total dissolved solids (TDS) or ownership.

**3. Pre-application filing guidance: Page 15:** Guidance provided by the permitting agencies and sought by prospective developers must include strong measures or incentives to locate renewable energy projects in environmentally suitable locations. The guidance must also include measures or incentives that will result in total or substantial avoidance of naturally occurring biological communities that support listed, sensitive or otherwise fully protected species, or provide important habitat linkage or connectivity on a landscape or regional scale. The guidance must not simply be a listing of all the requirements for site inventories of special status species, survey protocols, and reporting requirements. As we are now experiencing, there are a number of priority solar and wind projects that are located in some biologically sensitive and inappropriate areas, yet their permit applications and supporting information could be of excellent quality.

**4. Siting Criteria: Page 26, Item 3, line 12:** We fully support the strong criteria contained in this section of the document as to how to design a project to avoid or minimize impacts. There are many areas in the California Desert that contain naturally occurring plant and animal communities, including those supporting special status species or listed species, that are not classified as critical habitat, Areas of Critical Environmental Concern, or Desert Wildlife Management Areas. Sometimes these areas may fall within a designated Wildlife Habitat Management Area or Research Natural Area on public lands managed by the BLM, or they may not be within any designated special management area. They may, however, have significant biological resources values that may warrant precluding renewable energy project development.

Among the items listed in this section is the identification and evaluation of alternative project locations as a means of avoiding or substantially reducing impacts to significant biological resources. We fully support the need to conduct a robust analysis of alternatives so that the most appropriate project location can be identified as early in the application and permitting process as possible. The need for and identification of alternative project locations must be addressed by highly knowledgeable individuals fully familiar with the permitting process and the occurrence of significant natural and cultural resources, as well as those having expertise in the identification of private and public lands that are in a degraded condition, zoned for intensive or industrial use, and having few identifiable conflicts with renewable energy project development.

**5. Bighorn Sheep: Page 41, line 17:** In our previous comment letter on the draft manual we recommended the Desert Bighorn be added to the species-specific guidance. Desert Bighorn occupy numerous mountain ranges in the California Desert, many of which are in very isolated areas in the central, northern and eastern desert regions. Desert Bighorn move through portions of the desert to access permanent range in these mountainous areas, and the movement areas usually include extensive valleys that could be the subject of an application for a right of way from the BLM for a solar or wind power project or a transmission tie in line. A biologist having specialized experience with Desert Bighorn in California should be part of the interagency team

reviewing project proposals or participating in pre-application meetings with prospective permit applicants.


**6. Eagles: Page 38, line 11:** There is a need for strong and specific guidance for the protection of not only eagles, but all birds of prey in the California Desert from deleterious effects of wind energy projects. There are currently two priority projects that have the potential to cause injury or mortality to Golden Eagles and other species of raptors. Nesting occurs within several miles of proposed wind turbines and individual birds forage over a much larger area including large expanses of public land proposed for wind turbine development. Raptors are fully protected under the California Fish and Game Code as well as the Migratory Bird Treaty Act.

We urge the REAT to develop strong criteria for the protection of all nesting and foraging raptors, such as zoning of certain areas off-limits to wind turbine placement. The traditional approach of minimizing raptor losses due to electrocution on powerlines by adhering to design standards is insufficient.

**7. General:** In addition to the comments provided above, we reiterate the comments submitted in our letter, dated November 20, 2009, to the extent that those issues have not been addressed by the REAT in this revised draft manual,.

Thank you for considering our comments and for making some of our suggested changes (e.g., Williamson Act and timing of meetings with conservation community). If you have any questions, please contact me at (916) 313-5800 x110 or via email at [jaardahl@defenders.org](mailto:jaardahl@defenders.org).

Sincerely,

A handwritten signature in dark ink, appearing to read "Jeff Aardahl", with a long, sweeping horizontal line extending to the right.

Jeff Aardahl  
California Representative